

Respondent.

No. 08-0612 DI

<sup>1</sup>The certified mail receipt does not show a date of service, but the signed receipt was filed with us on April 24, 2008.

her behalf appeared at the hearing. The matter was ready for our decision on November 13, 2008, when the Director's brief was filed. The following facts are undisputed.

### **Findings of Fact**

1. Pell was licensed by the Director on February 16, 2001, as an insurance producer. Her license expires on February 16, 2009.
2. On September 24, 2003, Janie A. Miller, the Commissioner of the Kentucky Department of Insurance, found that Pell had violated Kentucky insurance laws KRS 304.9-105, KRS 304.9-140, and KRS 304.9-440(1)(a) and ordered Pell to pay a civil penalty of \$500.
3. Pell failed to report to the Director the discipline of her Kentucky insurance producer license within 30 days of the final disposition of the matter.
4. On May 12, 2004, the Virginia State Corporation Commission revoked Pell's Virginia insurance agent license.
5. Pell failed to report to the Director the revocation of her Virginia insurance agent license within 30 days of the final disposition of the matter.
6. On February 1, 2005, the Massachusetts Division of Insurance revoked Pell's Massachusetts insurance producer license.
7. Pell failed to report to the Director the revocation of her Massachusetts insurance producer license within 30 days of the final disposition of the matter.
8. On December 21, 2005, the Iowa Division of Insurance revoked Pell's Iowa insurance agent license.
9. Pell failed to report to the Director the revocation of her Iowa insurance agent license within 30 days of the final disposition of the matter.
10. On November 15, 2006, Pell and the New York State Insurance Department entered into a "Stipulation Surrendering License" concerning Pell's New York insurance agent license.

The stipulation had “the same force and effect as if said licenses had been revoked or denied after a hearing.”<sup>2</sup>

11. On November 28, 2006, Pell reported to the Director that she had surrendered her New York insurance agent license.

### **Conclusions of Law**

We have jurisdiction to hear this complaint.<sup>3</sup> The Director has the burden of proving that Pell has committed an act for which the law allows discipline.<sup>4</sup> The Director cites the request for admissions that was served on Pell on August 15, 2008. Pell did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.<sup>5</sup> Such a deemed admission can establish any fact or any application of law to fact.<sup>6</sup> That rule applies to all parties, including those acting *pro se*.<sup>7</sup> Section 536.073, RSMo 2000, and our Regulation 1 CSR 15-3.420(1) apply that rule to this case. But statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline.<sup>8</sup> Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Director argues that there is cause for discipline under § 375.141:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

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<sup>2</sup>Ex. 1.

<sup>3</sup>Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2007.

<sup>4</sup>*Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>5</sup>*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

<sup>6</sup>*Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

<sup>7</sup>*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

<sup>8</sup>*Kennedy v. Missouri Real Estate Comm’n*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

\* \* \*

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

Violating Insurance Laws/Regulation – Subdivision (2)

Pell admitted that she violated the following Kentucky insurance laws. KRS 304.9-105 provides:

(1) An individual applying for an agent license shall make application to the executive director on the uniform individual application or other application prescribed by the executive director. Before approving the application, the executive director shall find that the applicant:

(a) Is at least eighteen (18) years of age;

(b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;

(c) Has not committed any act that is a ground for denial, suspension, or revocation set forth in KRS 304.9-440;

(d) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the executive director;

(e) Is competent to exercise the license and has:

1. Except for variable life and variable annuities line of authority and limited lines of authority identified in KRS 304.9-230, completed a prelicensing course of study consisting of forty (40) hours for life and health, forty (40) hours for property and casualty, or twenty (20) hours for each line of authority, as applicable, for which the individual has applied. The executive director shall promulgate administrative regulations to carry out the purpose of this section;

2. Except for variable life and variable annuities line of authority and limited lines of authority identified in accordance with KRS 304.9-230, successfully passed the examinations required by the executive director for the lines of authority for which the individual has applied; and

3. Paid the fees set forth in KRS 304.4-010; and

(f) Is financially responsible to exercise the license and has:

1. a. Filed with the executive director the certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year, and that the policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the executive director; or

b. Deposited with the executive director cash, or a cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as an agent; or

c. Filed with the executive director on his or her behalf, by an authorized insurer or group of affiliated insurers for which he or she is or is to become an exclusive agent, an agreement whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent on behalf of the insurer or group of affiliated insurers in the sum of twenty thousand dollars (\$20,000) for any single occurrence and that the agreement shall not be terminated until the license is surrendered to the executive director or at least thirty (30) days' prior written notice will have been given to the executive director, whichever shall first occur; and

2. Agreed with the executive director that if at any time notice is given to the executive director that any policy filed in accordance with subparagraph 1.a. of this paragraph, or agreement filed in accordance with subparagraph 1.c. of this paragraph, is to be terminated and has not been replaced by another policy or agreement within the time established by regulations of the executive director, or if any deposit in accordance with subparagraph 1.b. of this paragraph be reduced through levy of

execution and not replaced by any necessary additional deposit within the time established by administrative regulations of the executive director, any and all licenses held by the licensee are revoked and shall be promptly surrendered to the executive director without demand.

(2) The executive director may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

KRS 304.9-140 provides:

(1) Unless denied a license in accordance with KRS 304.9-440, a nonresident individual or business entity shall receive the applicable insurance producer license if:

(a) The applicant is currently licensed as a resident and in good standing in his or her home state;

(b) The applicant has submitted the proper request for license and has paid the fees required by KRS 304.4-010 and administrative regulations;

(c) The applicant has submitted or transmitted to the executive director the application for a license that the applicant submitted to his or her home state or a completed uniform individual application or uniform business entity application; and

(d) The applicant's home state awards nonresident licenses to residents of this state on the same basis.

(2) The executive director may verify the applicant's license status through the database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(3) A nonresident licensee who changes his or her home state to a state other than Kentucky shall file a change of address and provide certification from the new home state within thirty (30) days of the change of home state. No fee or license application is required.

(4) Notwithstanding any other provisions of this chapter, on or after July 1, 2002, an individual licensed as a surplus lines broker in his or her home state shall receive a nonresident surplus lines broker license by meeting the requirements of subsection (1) of this section. Except as to subsection (1) of this section, nothing in

this section otherwise amends or supersedes any provision of Subtitle 10 of this chapter.

(5) Notwithstanding any other provision of this subtitle, an individual licensed as a limited lines agent in his or her home state shall receive a nonresident limited lines agent license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the agent's home state.

(6) The executive director shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by subsection (1) of this section, if the applicant's home state awards nonresident licenses to residents of Kentucky on the same basis.

(7) As a condition to or in connection with the continuation of an insurance producer license issued under this section, the licensee must maintain the applicable license in his or her home state. The insurance producer license issued under this section shall terminate and be surrendered to the executive director if and when the licensee's applicable home state license terminates for any reason.

KRS 304.9-440 provides:

(1) The executive director may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twenty-four (24) months, revoke, or refuse to issue or renew any license issued under this subtitle or any surplus lines broker, life settlement broker, or life settlement provider license, or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for any one (1) or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

\* \* \*

(p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude[.]

Pell violated Kentucky's insurance laws.

Pell also violated § 375.141.6:

An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

Pell's insurance producer license or its equivalent has been revoked in the states of Virginia, Massachusetts, Iowa, and New York. Pell's insurance producer license or its equivalent has been disciplined in the state of Kentucky. Except for the action in New York, Pell failed to notify the Director of the action within thirty days of the final disposition of the matter. There is cause for discipline under § 375.141.1(2).

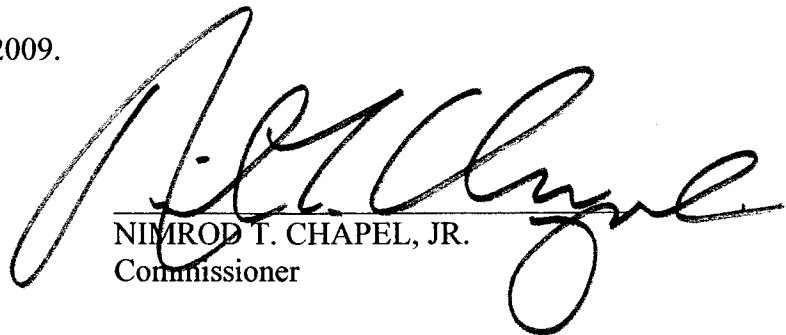
Discipline in Another State – Subdivision (9)

Pell's insurance license has been disciplined in five other states. There is cause for discipline under § 375.141.1(9).

**Summary**

There is cause to discipline Pell under § 375.141.1(2) and (9).

SO ORDERED on January 14, 2009.



NIMROD T. CHAPEL, JR.  
Commissioner